

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762)	WT Docket No. 06-150
and 777-792 MHZ Bands)	
)	
Revision of the Commission's Rules to Ensure)	CC Docket No. 94-102
Compatibility with Enhanced 911 Emergency)	
Calling Systems)	
)	
Section 68.4(a) of the Commission's Rules)	WT Docket No. 01-309
Governing Hearing Aid-Compatible)	
Telephones)	
)	
Biennial Regulatory Review – Amendment of)	WT Docket No. 03-264
Parts 1, 22, 24, 27, and 90 to Streamline and)	
Harmonize Various Rules Affecting Wireless)	
Radio Services)	
)	
Former Nextel Communications, Inc.)	WT Docket No. 06-169
Upper 700 MHz Guard Band)	
Licenses and Revisions to Part 27 of)	
the Commission's Rules)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in)	
the 700 MHz Band)	
)	
Development of Operational, Technical and)	WT Docket No. 96-86
Spectrum Requirements for Meeting Federal,)	
State and Local Public Safety)	
Communications Requirement Through the		
Year 2010		

**COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Telecommunications Industry Association (“TIA”) hereby submits comments in response to the Further Notice of Proposed Rule Making in the above-captioned proceeding.’

I. INTRODUCTION

TIA is the leading trade association for the information and communications technology (“ICT”) industry, with 600 member companies that manufacture or supply the products and services used in global communications across all technology platforms. TIA represents its members on the full range of public policy issues affecting the ICT industry, co-owns NXTcomm – the new industry venue that will feature the business and technology of communications, information and entertainment – and is fully accredited by the American National Standards Institute (“ANSI”) to produce industry consensus standards. Among their numerous lines of business, TIA member companies design, produce, deploy, and integrate the public safety communications systems used by our nation’s first-responders, including the systems that use the bands that are subject to the issues addressed in this proceeding.

TIA participated in earlier stages of the public safety aspects of this proceeding and has a strong interest in the outcome. For the reasons discussed below, the Commission should (1) reconfigure the bandplan by consolidating the existing narrowband allocations to the upper half of the 700 MHz Public Safety Band; and (2) in the event the Frontline proposal is adopted, strictly enforce all buildout requirements and ensure that the public safety community retains control and priority access to the spectrum at issue.

¹ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al. *Report and Order and Further Notice of Proposed Rulemaking*, FCC 07-72 (April 27, 2007) (“FNPRM”).

With regard to the commercial bands, the Commission should (1) reject calls to establish eligibility restrictions; (2) decline proposals to adopt more onerous buildout requirements including, in particular, the concept of “keep what you use”; and (3) not address in this proceeding the “open access” issues raised by one of the commenters. In all events, the Commission should move forward promptly to resolve these issues so that the auction may proceed on time consistent with the statute.²

A. The Bandplan Should Be Reconfigured To Create A Contiguous Block for Public Safety Narrowband

TIA endorses the Commission’s tentative conclusion that it should consolidate the existing narrowband allocations to the upper half of the 700 MHz Public Safety Band. Comments filed in earlier stages of this proceeding demonstrate that this position finds strong support across multiple industry segments, including the public safety community.³

The benefits to this proposal are numerous. For example, the current bandplan is spectrally inefficient. Specifically, under the current configuration, 3 MHz of the narrowband spectrum lies adjacent to one side of the wideband block, and another 3 MHz of narrowband spectrum rests adjacent to the other end of the wideband block. This split configuration requires approximately 1 MHz of guardband to be taken from each end of the wideband spectrum -- or roughly one-third of the available spectrum -- to protect narrowband operations. Reconfiguration of the band to provide a contiguous **6 MHz**

² The Digital Television Transition and Public Safety Act of 2005 requires that the 700 MHz auction must begin no later than January 28, 2008, in time for a DTV transition date of February 17, 2009.

³ See, e.g., FNPRM at nn. 523-26; Reply Comments of Lucent Technologies, Inc. at nn. 2-4, Nov. 6, 2006 (noting supporting comments filed by public safety entities, equipment manufacturers, and wireless carriers, among others).

paired block of spectrum for narrowband, as is tentatively proposed, would minimize the need for an internal guardband, making more spectrum available for productive uses.

Moreover, while the smaller spectrum blocks available to public safety under the current bandplan were perhaps suitable when the original bandplan was developed in the late 1990s, they are insufficient to accommodate some of the more advanced technologies that have developed since that time. Adoption of the proposed, consolidated bandplan will thus provide public safety entities with greater flexibility and increase technological choice.⁴ Further, consolidation of the narrowband channels would lower the risk of intermodulation distortion in narrowband receivers.⁵ For all of these reasons, TIA urges the Commission to adopt the consolidated bandplan identified in the FNPRM.

B. If the Commission Adopts the Frontline Proposal, It Must Strictly Enforce Buildout Requirements And Ensure That The Public Safety Entity Retains Priority Access To The Spectrum

Should the Commission decide to adopt the Frontline proposal in whole or in part, TIA strongly urges the Commission to strictly enforce the proposed construction obligations⁶ and ensure that the nationwide public safety licensee retains priority access to the nationwide public safety and E Block license spectrum. TIA is fearful that the commercial E Block licensee would face significant incentives to cut corners. The Commission must not allow this to occur. As Commissioner Copps observed:

“[n]o plan is going to work without the close, ongoing oversight and enforcement authority of this Commission. The commitments

⁴ See Reply Comments of Lucent Technologies, Inc. in WT Docket No. 06-169 at 2-3; Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Intel Corp, and Pegasus Communications in WT Docket No. 96-86 at 3-4; Comments of Motorola, Inc. in WT Docket No. 06-169 at 5-12 .

⁵ See Alcatel-Lucent Mar. 21 *Ex Parte* in WT Docket No. 06-169.

⁶ According to Frontline, the E Block licensee would be required to cover 75 percent of the U.S. population within four years of the 700 MHz auction clearing date, cover 95 percent of the U.S. population within seven years, and cover 98 percent within 10 years.

made here are commitments that have to be met. This isn't about voluntary best efforts that may or may not culminate in real-world results at some future date-this is about getting an essential job done right and done on time. Achieving just the right balance in the management and oversight of this dual-use system and making sure it is flexible enough to jump from one purpose to another instantaneously will require unprecedented and historical coordination and cooperation.”⁷

TIA believes that it is essential for the Commission to be extremely vigilant in its oversight of this process should any part of the proposal be adopted. Specifically, the Commission should consider automatic enforcement options, regular reporting requirements, and the use of bonds to ensure performance and other traditional commercial tools. The stakes are too high for the public safety community to rely solely on the traditional enforcement tools of the Commission. Accordingly, TIA firmly believes that the Frontline Proposal, if adopted, requires an extraordinary enforcement and oversight regime to ensure that it achieves its mission.

C. The Imposition of Eligibility Restrictions Would Be Contrary To The Public Interest

The Commission should not disable this auction by imposing eligibility restrictions on DSL providers, cable modem providers and large wireless carriers. The FCC has toiled for a decade to create and foster a competitive wireless marketplace – and, by virtually any metric, it has been an overwhelming success.* Today wireless carriers of all stripes are investing billions of dollars in tomorrow's broadband networks – and increasingly Americans are turning to wireless broadband.’ Keeping these vibrant new broadband

⁷ FNPRM, FCC 07-72, Statement of Commissioner Michael J. Copps, at 180.

⁸ *Eleventh Annual Report to Congress on the State of Competition in the Commercial Mobile Radio Services (“CMRS”) Industry*, FCC 06-142 (released Sept. 29, 2006).

entrants out of an auction for this uniquely valuable spectrum will hinder this progress.

As the Commission concluded in the AWS proceeding, eligibility restrictions are appropriate only when necessary to prevent a significant likelihood of substantial competitive harm. Such a showing cannot be made here. The Commission has readily acknowledged that the wireless market is highly competitive, with consumers increasingly enjoying more service options at cheaper prices. Moreover, eligibility restrictions would contravene the Commission's long-held view that open auctions are the best way to assign spectrum rights to those who value them most and who can put the licenses to their most efficient use. Imposition of eligibility restrictions would have the opposite effect, placing valuable spectrum rights in the hands of lesser-capitalized, lesser-experienced parties, with significantly less ability to quickly deploy services using the 700 MHz band, ultimately delaying introduction of the wireless broadband "third pipe" which the Commission is eager to introduce.

The FCC has thoughtfully moved away from these types of restrictions based on the competitiveness of the market and the lessons of its regulatory history. Although eligibility restrictions were initially imposed on PCS, the Commission not only lifted those restrictions after the marketplace became competitive, but it also repeatedly rejected efforts to impose these types of obligations on subsequent auctions. Similarly, the FCC eliminated the spectrum cap and cellular cross interest rules because they were no longer required in a competitive marketplace. Finally, the Commission's only prior effort to keep

⁹ Recent Commission statistics indicate that nearly half of all growth in broadband deployment over the past year was attributable to mobile broadband, which now accounts for about 17 percent of all high-speed lines. *See High-speed Services for Internet Access Status as of June 30, 2006*, Industry Analysis and Technology Division, Wireline Competition Bureau, FCC, at Table 1 (Jan. 2007).

out incumbent cable and wireline providers from an auction was LMDS.¹⁰ That auction had limited success, capital never really flowed to the market, services have yet to be offered ubiquitously, and the prohibition on ownership was subsequently lifted. The Commission's history and experience show that these types of limitations simply do not advance the public interest in a competitive marketplace. The Commission should accordingly reject proposals to exclude existing broadband providers from participation in the auction.

D. The Commission Should Not Adopt More Aggressive Buildout Requirements for the Commercial Licensees

The Commission should apply to 700 MHz licenses the same construction obligations that it has applied in the broadband PCS context, including the availability of a substantial service showing. The Commission asks, in particular, whether existing substantial service requirements are adequate or whether more intrusive rules are warranted. The wireless industry has invested billions of dollars in its networks and continues to expand its coverage footprint to new areas of the country. There is no incentive, or ability, for the carriers to buy spectrum and not put it to its highest and best use.

The FCC's current construction benchmarks have resulted in the introduction of service to more and more rural areas, with the vast majority of the US population (98 percent) now served by multiple carriers. And these percentages continue to grow without any special prodding from the Commission. The record thus demonstrates that more

¹⁰ *Rulemaking to Amend Parts 1, 2, 21, and 25 of the Commission's Rules to Redesignate the 27.5-29.5 GHz Frequency Band, to Reallocate the 29.5-30.0 GHz Frequency Band to Establish Rules and Policies for Local Multipoint Distribution Service and for Fixed Satellite Services*, Second Report and Order, 12 FCC Rcd 12545, 12623-26 (1997).

burdensome performance requirements are not needed to encourage wireless construction in even remote areas. Moreover, there is ample spectrum available for additional parties wishing to serve rural areas by virtue of the successful secondary markets regime.

The likely result of imposing new, more stringent construction obligations, in contrast, would be to provide incentives for uneconomic buildout or the buildout of marginal networks simply to preserve territory. None of these outcomes would serve the public interest. Similar adverse consequences would result if the Commission were to adopt a “keep what you use” methodology. “Keep what you use” would, in effect, take spectrum away from the very entities that are best positioned to efficiently build out in remote areas by extending their existing networks. For these reasons, TIA submits that 700 MHz licensees should be subject to the same construction obligations as broadband PCS licensees.

E. The Commission Should Not Impose Open Access Requirements On 700 MHz Spectrum

The FCC should resist any effort to adopt elements of a proposal put forward by The *Ad Hoc* Public Interest Spectrum Coalition¹¹ that licensees be required to provide open access to their network, allowing the attachment of any device to the network and permitting users to access services and content provided by unaffiliated providers. The concept of open access or net neutrality raises highly complex issues regarding the marketplace, technology, network management, and consumer choice. The Commission must develop a full record, balancing the costs and benefits, before it adopts any such requirement. In this regard, the Commission currently has pending at least two

¹¹ Frontline recommends that the E Block license be subject to a similar requirement, and proposes further that the requirement also apply to all other licenses owned or controlled by the E Block licensee.

proceedings -- the Broadband Practices proceeding¹² and the Skype Petition¹³ -- in which these issues will be comprehensively explored. Regardless of the preferred policy approach to these issues, the 700 MHz rulemaking does not provide the record or the platform from which to consider these critical questions.

Respectfully submitted,

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¹² *In re* Broadcast Industry Practices, FCC 07-31 (released Apr. 16, 2007).

¹³ *In re* Petition to Confirm a Consumer's Right to Use Internet Communications Software and Attach Devices to Wireless Networks, RM-11361 (released Mar. 15, 2007).